

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BURVIN STEVENSON,

Plaintiff,

CIVIL ACTION NO. 07-CV-14040-DT

vs.

DISTRICT JUDGE DENISE PAGE HOOD

GEORGE PRAMSTALLER,  
et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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**REPORT AND RECOMMENDATION**

I.     **RECOMMENDATION:** This Court recommends that Defendants Borgerding, Ventocilla, Malloy, and MDOC Bureau of Health Care Services be **DISMISSED** without prejudice pursuant to Fed. R. Civ. P. 4(m) for failure to effect service.

II.     **REPORT:**

This matter comes before the Court *sua sponte* following this Court's issuance of an Order to Show Cause for Plaintiff to show cause why his Complaint should not be dismissed as to Defendants William Borgerding, Mark Ventocilla, Terry Malloy, and the MDOC Bureau of Health Care Services pursuant to Fed. R. Civ. P. 4(m). (Docket no. 52). Plaintiff responded to the Order to Show Cause. (Docket no. 56). As a result, the Court entered an Order Directing Service by Plaintiff as to these Defendants on October 24, 2008. (Docket no. 57). Plaintiff has not been granted leave to proceed *in forma pauperis*. Plaintiff was formerly a state prisoner but has now been released. All pretrial matters have been referred to the undersigned for decision. (Docket no. 5). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e).

Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time. Fed. R. Civ. P. 4(m). The Complaint in this action was filed in this Court on September 25, 2007. (Docket no. 1). The 120-day period has therefore expired. The Court's Order Directing Service ordered that Plaintiff effect service on these Defendants and file proper proof of service with the Clerk on or before November 21, 2008. (Docket no. 57). This Order also warned Plaintiff that failure to effect service within this time would likely result in the dismissal of these Defendants without prejudice. Plaintiff has not submitted any proof of service or otherwise responded. Accordingly, this Court recommends that these Defendants be dismissed without prejudice from this action pursuant to Fed. R. Civ. P. 4(m).

### **III. NOTICE TO PARTIES REGARDING OBJECTIONS:**

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6<sup>th</sup> Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6<sup>th</sup> Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6<sup>th</sup> Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: December 18, 2008

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

**PROOF OF SERVICE**

I hereby certify that a copy of this Report and Recommendation was served upon Burvin Stevenson and Counsel of Record on this date.

Dated: December 18, 2008

s/ Lisa C. Bartlett  
Courtroom Deputy